

U.S. Department of Labor

Board of Alien Labor Certification Appeals
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Issue Date: 07 March 2006

BALCA Case No.: 2005-INA-00012
ETA Case No.: P2003-NJ-02495477

In the Matter of:

MEADOWLAND IMPORTS, INC.,
Employer,

on behalf of

GERBSON DE MOURA,
Alien.

Appearance: Carlos Sousa, *Pro Se*
Kearny, New Jersey
For the Employer

Certifying Officer: Dolores DeHaan
New York, New York

Before: **Burke, Chapman, and Vittone**¹
Administrative Law Judges

JOHN M. VITTON
Chief Administrative Law Judge

DECISION AND ORDER

Meadowland Imports, Inc., (Employer) filed an application for labor certification² on behalf of Gerbson de Moura (Alien) on June 18, 2001 (AF 28).³ Employer seeks to employ

¹ Associate Chief Administrative Law Judge Thomas M. Burke did not participate in this matter.

² Permanent alien labor certification is governed by section 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5)(A), and Title 20, Part 656 of the Code of Federal Regulations ("C.F.R."). This application was filed prior to the effective date of the "PERM" regulations. See 69 Fed. Reg. 77326 (Dec. 27, 2004). Accordingly, the regulatory citations in this decision are to the 2004 edition of the Code of Federal Regulations published by the

Alien as an automobile mechanic (Occ. Code: 620.261-010). *Id.* This decision is based on the record upon which the Certifying Officer (CO) denied certification and Employer's request for review, as contained in the Appeal File. 20 C.F.R. § 656.27(c).

BACKGROUND

In its application, Employer described the duties of the position as "Repairs, installs (old and new) parts, engine, radiator. Aligns and balances brakes and fixes suspension, transmissions, diagnostic sensors, fixes or replaces gasoline/diesel motors, fixes AC and heating systems of cars, trucks. Regulates injectors, carburetors, mufflers, tune-ups. Uses all machines and tools for the installing and repairs of all parts on all cars and trucks. Workdays: Monday thru Friday." Employer required three years of experience in the job offered. (AF 28). Employer also requested Reduction in Recruitment (RIR) processing. (AF 48).

In the Notice of Findings (NOF) issued June 29, 2004, the CO noted that Employer's agent, Dulce Cuco of Central Migration, was convicted of visa fraud. In order to determine the legitimacy of this application, the CO stated that Employer must provide signed statements indicating that Employer wishes to continue to pursue the application and that all owners of the business authorized the filing of the application. In addition, the CO requested a copy of the signed federal tax return for the last two years and a copy of Employer's business tax identification number. The CO also requested a complete staffing chart of the business listing each employee by title and job duties, salary, and work schedule. Finally, the CO asked whether the owner, Employer, or signatory of the ETA 750 A form had ever received any payments from the Alien or a representative for the Alien in return for filing this application. (AF 18-19).

Employer submitted rebuttal on July 29, 2004 stating that he, Carlos Sousa, was the owner of Meadowland Imports, Inc., and that he wished to pursue the application on behalf of the Alien, Gerbson de Moura. Mr. Sousa stated that he had signed the form ETA 750 A. He also stated that he never received any payment from the Alien or the Alien's representative for filing

Government Printing Office on behalf of the Office of the Federal Register, National Archives and Record Administration, 20 C.F.R. Part 656 (Revised as of Apr. 1, 2004), unless otherwise noted.

³ In this decision, AF is an abbreviation for Appeal File.

the application. In addition, Mr. Sousa submitted a form G-28 designating Cassandre C. Lamarre as his attorney or representative. (AF 11-12).⁴

The CO issued a Final Determination denying Employer's application for labor certification on August 23, 2004 (AF 9-10). The CO found Employer's documentation was not sufficient. Specifically, the CO noted Mr. Sousa gave no explanation for why his signature was "whited out" on one 750 A form and crossed out on another copy of the form. In addition, the CO noted Employer failed to submit copies of the signed federal tax returns for the business for the last two years and to furnish a complete staff chart as requested in the NOF. The CO concluded that since Employer failed to provide the documentation requested, he had not adequately documented that the job opportunity is bona fide and that the job opening actually exists and is open to US workers. Based on those findings, the CO denied the application for labor certification.

On August 31, 2004, the Employer requested review (AF 1). In his request for review, Employer stated he submitted a letter from his accountant explaining that his company taxes were currently under an extension for review. In addition, he stated he had submitted a copy of his employee list. Employer also stated he had signed the forms as directed. The case was docketed by the Board on October 22, 2004.

DISCUSSION

In this case, the CO noted significant deficiencies with the labor application, in particular the fact that Employer did not submit the requested documentation, including federal tax forms and a job chart for the business. In his request for review, Employer stated that he submitted a letter from his accountant explaining that his company taxes are currently under an extension for review and that he had submitted a copy of his employee list. Neither document is included in the record before us. On further review of the record, however, we note that pages 14, 16, 29

⁴ We note that although Ms. Lamarre is Employer's counsel of record in this matter, the Owner, Mr. Sousa, submitted Employer's request for review before the Board of Alien Labor Certification Appeals along with his arguments in support thereof.

and 31 are missing from the Administrative File. Since it is possible that the documentation which Employer claims he submitted is included in the missing pages, we conclude that remand to the CO for preparation of a complete Administrative File is the most appropriate course of action at this time.

On remand, the CO is also directed to review the case to determine if remand to the local job service for regular processing would be appropriate. We find that the CO implied a denial of the request for RIR in the Final Determination and denial of labor certification. Typically, when the CO denies an RIR, the case should be remanded to the local job service for regular processing. *See* 20 C.F.R. 767.21(i)(5). *Compaq Computer Corp.*, 2002-INA-249 (Sept. 3, 2003).

ORDER

The Certifying Officer's denial of labor certification is hereby **VACATED** and this matter is **REMANDED** to the Certifying Officer for further proceedings consistent with this determination.

For the panel:

A

JOHN M. VITTON
Chief Administrative Law Judges

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary unless within twenty days from the date of service a party petitions for review by the full Board. Such review is not favored and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, NW Suite 400
Washington, DC 20001-8002

Copies of the petition must also be served on other parties and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five double-spaced pages. Responses, if any, shall be filed within ten days of service of the petition, and shall not exceed five double-spaced pages. Upon the granting of a petition the Board may order briefs.